

## **IC 33-5-5.1**

### **Chapter 5.1. Allen Superior Court**

#### **IC 33-5-5.1-1**

##### **Court created**

Sec. 1. (Court Created) There shall be and is hereby established a superior court in Allen County, Indiana.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-2**

##### **Name**

Sec. 2. (Name) The court shall be named and styled Allen Superior Court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-3**

##### **Seal**

Sec. 3. (Seal) The court shall have a seal consisting of a circular disk containing the words, "Allen Superior Court," "Indiana," "Seal," and such design as the court may determine, an impression of which shall be spread of record upon the order book of the court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-4**

##### **Jurisdiction**

Sec. 4. (a) The court has the same jurisdiction as the Allen circuit court. Except as provided in subsection (b), the court has exclusive juvenile jurisdiction in Allen County.

(b) The court has concurrent jurisdiction with the Allen circuit court concerning paternity actions.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.) As amended by Acts 1978, P.L.136, SEC.30; P.L.281-1995, SEC.2.*

#### **IC 33-5-5.1-5**

##### **Court of record**

Sec. 5. (Court of Record) The court shall be a court of record, and its judgments, decrees, orders and proceedings shall have the same force and effect and shall be enforced in the same manner as those of the circuit court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-6**

##### **Rules and regulations; incidental powers of judges**

Sec. 6. (Rules and Regulations — Incidental Powers of Judges) The court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and the rules of the supreme court of Indiana, and shall have all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders. The judges shall have the full authority to

administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and all legal instruments, and to give all necessary certificates for the authentication of the records and proceedings in the court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-7**

#### **Orders, writs, appointments, and commissions**

Sec. 7. (Orders, Writs, Appointments, Commissions) The court shall have the same power to grant restraining orders, injunctions, and writs of ne exeat, to issue writs of habeas corpus, to appoint receivers, masters, and commissioners to convey real property, and to grant commissions for the examination of witnesses, and to appoint other officers necessary to facilitate and transact the business of the court as is now or may hereafter be conferred on circuit courts or the judges thereof.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-8**

#### **Personnel; powers**

Sec. 8. (a) The court may appoint such number of probate commissioners, juvenile referees, bailiffs, court reporters, probation officers, and such other personnel, including but not limited to an administrative officer, as shall in the opinion of the court be necessary to facilitate and transact the business of the court. In addition to the personnel authorized under this subsection and IC 31-31-3, the judges of the Allen superior court-civil division may jointly appoint not more than four (4) full-time magistrates under IC 33-4-7 to serve the Allen superior court-civil division. The judges of the Allen superior court-civil division may jointly assign any such magistrates the duties and powers of a probate commissioner. In addition to the personnel authorized under this subsection and IC 31-31-3, the judge of the Allen superior court-criminal division may jointly appoint not more than three (3) full-time magistrates under IC 33-4-7 to serve the Allen superior court-criminal division. Any such magistrate serves at the pleasure of, and continues in office until jointly removed by, the judges of the division that appointed the magistrate. All appointments made under this subsection shall be made without regard to the political affiliation of the appointees. The salaries of the above personnel shall be fixed and paid as provided by law. If the salaries of any of the above personnel are not provided by law, the amount and time of payment of such salaries shall be fixed by the court, to be paid out of the county treasury by the county auditor, upon the order of the court, and be entered of record. The officers and persons so appointed shall perform such duties as are prescribed by the court. Any such administrative officer appointed by the court shall operate under the jurisdiction of the chief judge and shall serve at the pleasure of the chief judge. Any such probate commissioners, magistrates, juvenile referees, bailiffs, court reporters, probation officers, and other personnel appointed by the court shall serve at the pleasure of the court.

(b) Any probate commissioner so appointed by the court may be

vested by said court with all suitable powers for the handling and management of the probate and guardianship matters of the court, including the fixing of all bonds, the auditing of accounts of estates and guardianships and trusts, acceptance of reports, accounts, and settlements filed in said court, the appointment of personal representatives, guardians, and trustees, the probating of wills, the taking and hearing of evidence on or concerning such matters, or any other probate, guardianship, or trust matters in litigation before such court, the enforcement of court rules and regulations, the making of reports to the court concerning his doings in the above premises, including the taking and hearing of evidence together with such commissioner's findings and conclusions regarding the same, all of such matters, nevertheless, to be under the final jurisdiction and decision of the judges of said court.

(c) Any juvenile referee so appointed by the court may be vested by said court with all suitable powers for the handling and management of the juvenile matters of the court, including the fixing of bonds, the taking and hearing of evidence on or concerning any juvenile matters in litigation before the court, the enforcement of court rules and regulations, the making of reports to the court concerning his doings in the above premises, all of such matters, nevertheless, to be under final jurisdiction and decision of the judges of said court.

(d) For any and all of the foregoing purposes, any probate commissioner and juvenile referee shall have the power to summon witnesses to testify before the said commissioner and juvenile referee, to administer oaths and take acknowledgments in connection with and in furtherance of said duties and powers.

(e) The powers of a magistrate appointed under this section include the powers provided in IC 33-4-7 and the power to enter a final order or judgment in any proceeding involving matters specified in IC 33-5-2-4 (jurisdiction of small claims docket) or IC 34-26-5 (protective orders to prevent domestic or family violence).

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.) As amended by P.L.18-1995, SEC.22; P.L.1-1997, SEC.123; P.L.196-1999, SEC.10; P.L.133-2002, SEC.39.*

### **IC 33-5-5.1-8.5**

#### **Salary of juvenile referee**

Sec. 8.5. Each juvenile referee appointed under section 8 of this chapter, who:

- (1) is appointed by the court to serve as a full-time referee; and
- (2) does not practice law during his term as referee;

shall receive an annual salary as provided in IC 33-13-12-8.2.

*As added by Acts 1980, P.L.189, SEC.1. Amended by P.L.292-1983, SEC.4.*

### **IC 33-5-5.1-9**

#### **Where court held**

Sec. 9. (Where Court Held) The Allen Superior Court shall hold its sessions in the Allen County Court House in the city of Fort Wayne, State of Indiana, and in such other places in Allen County as the court

may from time to time determine. The board of county commissioners of Allen County shall provide and maintain in the Court House, and at such other places in Allen County as the court may determine, suitable and convenient courtrooms for the holding of the court, together with suitable and convenient jury rooms and offices for the judges, and other court officers and personnel, and such other facilities as may be necessary. The board of county commissioners of Allen County shall also provide all necessary furniture and equipment for rooms and offices of the court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-10**

#### **Salaries of judges**

Sec. 10. (Salaries of Judges) The judges of the court shall receive the same salary as is now, or may hereafter be provided by law to be paid to the judge of the Allen Circuit Court, which salary shall be paid at the time and in the same manner as the judge of the Allen Circuit Court is now paid.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-11**

#### **Clerk and sheriff**

Sec. 11. (Clerk and Sheriff) The clerk of the Allen Circuit Court and the sheriff of Allen County shall be the clerk and sheriff, respectively, of the court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-12**

#### **Clerk and sheriff; duties, liabilities, fees, and procedure**

Sec. 12. (Clerk and Sheriff: Duties, Liabilities, Fees and Procedure). The clerk and sheriff shall attend said court and discharge all the duties pertaining to their respective offices as they are now or may hereafter be required to do, by law, in the circuit court; and all laws now in force, or which may be enacted, prescribing the duties and liabilities of such officers, and the mode of proceeding against them, or either of them for neglect of official duty, allowing fees and providing for the collection thereof, in the circuit court, shall be held and deemed to extend to the Allen Superior Court, as far as they apply. In any case in the Allen Superior Court based upon a violation of a city ordinance where fines or forfeitures, or both, are adjudged against a party, the fines or forfeitures, or both, shall be paid to and collected by the clerk and regularly remitted to the city clerk of the city which issued the ordinance and the city clerk shall disburse the same as is now, or may hereafter be, required by law. Payment of fines for admitted parking violations shall be made to the city clerk of the city which issued the ordinances concerning parking violations.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8; Acts 1972, P.L.208, SEC.1.)*

### **IC 33-5-5.1-13**

#### **Fees**

Sec. 13. (Fees) The same fees shall be taxed in said court as are now or may hereafter be provided by law to be taxed in the circuit court, and said fees, when collected, shall be disbursed in the same manner as like fees are disbursed in the circuit court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-14**

##### **Record books**

Sec. 14. (Record Books) The clerk, under the direction of the court, shall provide order books, judgment dockets, execution dockets, fee books, and such other books, papers, and records as may be necessary for the court, and all books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-15**

##### **Single order book**

Sec. 15. (Single Order Book) The court shall maintain a single order book for the entire court, which order book may be signed on behalf of the court by any of the judges of said court, and such signature shall be due authentication of the actions of each of the judges in the court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-16**

##### **Laws applicable to court**

Sec. 16. (Laws Applicable to Court) All laws of the State of Indiana and rules duly adopted by the Supreme Court of Indiana now in force or that may hereafter be enacted governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court shall be applicable to and govern the court hereby established.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

#### **IC 33-5-5.1-17**

##### **Jury commissioners; selection of jurors**

Sec. 17. (Jury Commissioners: Selection of Jurors) The clerk of the Allen Circuit Court and the jury commissioners appointed by the Allen Circuit Court shall serve as jury commissioners for this court and shall be governed in all respects as now or may hereafter be provided for the selection of jurors and the issuing and servicing of process: Provided, That said jurors need not serve in any particular order in which they are drawn by the jury commissioners: Provided, further, That any judge of the court may order the selection and summoning of other jurors for the court whenever the same may be necessary, and they shall serve the entire court and before any judge of the court where their service may be required.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-18**

#### **Fees of jurors and witnesses**

Sec. 18. (Fees of Jurors and Witnesses) Jurors and witnesses in attendance upon the court shall receive the same fees as are now or may hereafter be provided for by law for jurors and witnesses in the circuit court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-19**

#### **Appeals**

Sec. 19. (Appeals) Any party may appeal from any order or judgment of the court in any case where, by existing or future laws of this state, an appeal may be had from a similar order or judgment of the circuit court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-20**

#### **Process**

Sec. 20. (Process) The process of the court shall have the seal affixed and be attested, directed, served, and returned, and be in the form as is, or may be, provided for process issuing from the circuit court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-21**

#### **Repealed**

*(Repealed by P.L.168-1984, SEC.6.)*

### **IC 33-5-5.1-21.1**

#### **Board of judges**

Sec. 21.1. (a) The court shall be governed and operated by a board of judges, which is composed of all of the judges of the superior court. Six (6) judges are required for a quorum for conducting business and as a majority for taking action. Every two (2) years the board of judges shall elect a chief judge to carry out such ministerial functions of representation as the board of judges periodically determines by a majority of the board's members.

(b) Matters of administration, budget, expenditures, policy, and procedure affecting the entire court shall be determined by a majority of the board of judges. Any such determination shall bind the entire board of judges and each judge thereof.

(c) One (1) budget covering all the divisions of the court shall be prepared for the court and submitted to the county fiscal body. However, each division shall prepare its own budget as a component of the superior court's total budget.

*As added by P.L.168-1984, SEC.1. Amended by P.L.296-1985, SEC.1; P.L.203-1997, SEC.1.*

### **IC 33-5-5.1-22**

#### **Repealed**

*(Repealed by P.L.168-1984, SEC.6.)*

### **IC 33-5-5.1-23**

#### **Divisions of the court**

Sec. 23. (a) The court, by rules adopted by the court, shall divide the work of the court into the following divisions:

- (1) A family relations division.
- (2) A criminal division (including a standard minor offenses and violations docket under IC 33-5-2-8).
- (3) A civil division (including a standard small claims docket under IC 33-5-2-4).

(b) Cases involving juvenile matters shall be assigned to the family relations division.

(c) Cases involving matters specified in IC 33-5-2-8 shall be assigned to the criminal division.

(d) Cases involving matters specified in IC 33-5-2-4 shall be assigned to the small claims docket in the civil division.

(e) The work of each division may be divided further by rules adopted by the court.

(f) Every two (2) years each division of the court shall elect an administrative judge for that division. The administrative judge shall carry out such ministerial, administrative, and assignment functions as are periodically determined by a majority of the judges of that division.

(g) Matters of administration, budget, expenditures, policy, and procedure in each division shall be determined by a majority of the judges of that division.

(h) Disputes within any division concerning administration, budget, expenditures, policy, procedure, and assignments that pertain to the division as a whole or to any individual judge of the division, that for any reason cannot be resolved by a majority of the judges in the division shall be submitted to the board of judges and determined by a majority of the board of judges.

(i) A resolution approved by a majority of the board of judges that resolves disputes within a division must include at least one (1) of the judges of that division and shall bind all of the judges of that division. *(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.) As amended by P.L.301-1983, SEC.1; P.L.167-1984, SEC.44; P.L.203-1997, SEC.2.*

### **IC 33-5-5.1-24**

#### **Repealed**

*(Repealed by Acts 1982, P.L.181, SEC.8.)*

### **IC 33-5-5.1-25**

#### **Transfer of cases from circuit court**

Sec. 25. (Transfer of Cases from Circuit Court) The judge of the circuit court may, with the consent of this court, transfer any action, cause or proceeding filed and docketed in the circuit court to this court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with this court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-26**

#### **Transfer of cases to circuit court**

Sec. 26. (Transfer of Cases to Circuit Court) Any judge of this court may, with the consent of the judge of the circuit court, transfer any action, cause or proceeding filed and docketed in this court to the circuit court by transferring all original papers and instruments filed in such action, cause or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-27**

#### **Authority of circuit judge to sit in superior court**

Sec. 27. (Authority of Circuit Judge to Sit in Superior Court) The judge of the Allen Circuit Court shall be, at his discretion, authorized to sit as a judge of this court, with the court's permission, in all matters pending before this court, without limitation and without any further order, in the same manner and stead as if he were a judge of this court with all the rights and powers as if he were a duly appointed judge of this court.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.)*

### **IC 33-5-5.1-28**

#### **Repealed**

*(Repealed by Acts 1982, P.L.181, SEC.8.)*

### **IC 33-5-5.1-29**

#### **Judges; assignment to divisions; specific cases; declaration of candidacy**

Sec. 29. (a) The Allen County superior court consists of nine (9) judges. Two (2) judges serve in the family relations division, three (3) judges serve in the criminal division, and four (4) judges serve in the civil division. Each newly elected or appointed judge assumes the division assignment of the judge whom the judge replaces.

(b) If, at any time, in the opinion of a majority of the judges, there is an undue disparity in the number of cases in any division, the chief judge may assign specific cases normally assigned to that division to a judge in another division as a majority of the judges direct.

(c) During the period under IC 3-8-2-4 in which a declaration of candidacy may be filed for a primary election, any person desiring to become a candidate for one (1) of the Allen superior court judgeships must file with the election division a declaration of candidacy adapted from the form prescribed under IC 3-8-2 that:

(1) is signed by the candidate; and

(2) designates the division and the name of the incumbent judge of the judgeship that the candidate seeks.

(d) A petition without the designation required under subsection (c) shall be rejected by the election division (or by the Indiana election



commission under IC 3-8-1-2).

(e) If an individual who files a declaration under subsection (c) ceases to be a candidate after the final date for filing a declaration under subsection (c), the election division may accept the filing of additional declarations of candidacy for that seat not later than noon August 1.

*(Formerly: Acts 1971, P.L.429, SEC.1; Acts 1972, P.L.10, SEC.8.) As amended by Acts 1978, P.L.141, SEC.4; Acts 1982, P.L.181, SEC.7; P.L.301-1983, SEC.2; P.L.168-1984, SEC.2; P.L.334-1989(ss), SEC.12; P.L.7-1990, SEC.54; P.L.3-1997, SEC.446; P.L.176-1999, SEC.128.*

### **IC 33-5-5.1-29.1**

#### **Ballot for election of judge; conduct of election; term**

Sec. 29.1. (a) All candidates for each respective Allen superior court judgeship shall be listed on the general election ballot in the form prescribed by IC 3-11-2, without party designation. The candidate receiving the highest number of votes for each judgeship shall be elected to that office.

(b) IC 3, except where inconsistent with this chapter, applies to elections held under this chapter.

(c) The term of each Allen superior court judge:

(1) begins January 1 following election and ends December 31 following the election of a successor; and

(2) is six (6) years.

*As added by P.L.301-1983, SEC.3. Amended by P.L.5-1986, SEC.17; P.L.3-1987, SEC.532.*

### **IC 33-5-5.1-29.3**

#### **Candidate for judge; qualifications**

Sec. 29.3. (a) To qualify as a candidate for Allen superior court judge, a person:

(1) must be a citizen of the United States domiciled in Allen County;

(2) must have at least five (5) years active practice of law, including cases involving matters assigned to the division in which he would serve as judge;

(3) may not previously have had any disciplinary sanction imposed upon him by the supreme court disciplinary commission of Indiana or any similar body in another state; and

(4) may not previously have been convicted of any felony.

(b) If a person does not qualify under subsection (a), he may not be listed on the ballot as a candidate. However, an individual who was a judge of the court on January 1, 1984, does not have to comply with the requirements of subsection (a)(2).

*As added by P.L.301-1983, SEC.4. Amended by P.L.168-1984, SEC.3.*

### **IC 33-5-5.1-29.5**

#### **Definitions; limits on acceptance of contributions**

Sec. 29.5. (a) As used in this section:

(1) "contribution" has the meaning given in IC 3-5-2-15;

(2) "political action committee" has the meaning given in IC 3-5-2-37; and

(3) "regular party committee" has the meaning given in IC 3-5-2-42.

(b) No judge or candidate for judge of the Allen superior court may:

(1) accept a contribution from any political party, political action committee, or regular party committee; or

(2) accept more than a total of ten thousand dollars (\$10,000) in contributions from all sources to pay expenses connected with his candidacy.

*As added by P.L.301-1983, SEC.5. Amended by P.L.5-1986, SEC.18.*

### **IC 33-5-5.1-30**

#### **Repealed**

through IC 33-5-5.1-71 are repealed.

*(Repealed by Acts 1982, P.L.181, SEC.8.)*

*Note: This repeal affected only those sections of IC 33-5-5.1-30 through IC 33-5-5.1-71 that were in effect on August 31, 1982.*

### **IC 33-5-5.1-30.1**

#### **Judicial nominating commission; establishment; facilities, equipment, and supplies; compensation**

Sec. 30.1. There is hereby established a judicial nominating commission for the Allen superior court. The board of county commissioners of Allen County shall provide all facilities, equipment, supplies and services necessary for the administration of the duties of this commission. The members of the commission shall serve without compensation. However, the board of commissioners shall reimburse members of the commission for actual expenses incurred in performing their duties.

*As added by P.L.301-1983, SEC.6.*

### **IC 33-5-5.1-31.1**

#### **Judicial nominating commission; membership; quorum; ineligibility**

Sec. 31.1. (a) The judicial nominating commission shall consist of seven (7) members, the majority of whom shall form a quorum. The chief justice of the supreme court (or a justice of the supreme court or judge of the court of appeals designated by the chief justice) shall be a member and shall act as chairman. Persons who are admitted to the practice of law and who reside in Allen County shall, pursuant to sections 33.1 and 34.1 of this chapter, elect three (3) of their number to serve as members of the commission. The governor shall also appoint to the commission three (3) residents of Allen County who are not admitted to the practice of law. However, no more than two (2) of these appointees may be from the same political party. If the governor fails to appoint any of the nonattorney commission members within the time required under section 32.1 of this chapter, the appointment shall be made by the chief justice of the supreme court.

(b) No member of the commission other than a judge or justice may hold any other salaried public office, and no member may hold an

office in a political party or organization. A member of the commission is ineligible for appointment to a judicial office in Allen County while he is a member of the commission and for three (3) years thereafter. If any member of the commission other than a judge or justice terminates his residence in Allen County, he shall be considered to have resigned from the commission.

*As added by P.L.301-1983, SEC.7.*

#### **IC 33-5-5.1-32.1**

##### **Judicial nominating commission; nonattorney members, appointment, certification; term; vacancy**

Sec. 32.1. (a) The governor shall appoint the three (3) nonattorney members of the commission.

(b) One (1) month prior to the expiration of a term of office of a nonattorney commissioner, the governor shall either reappoint the commissioner or appoint a replacement. All appointments shall be certified to the secretary of state, the clerk of the supreme court and the clerk of Allen superior court within ten (10) days after the appointment.

(c) After their initial terms, the governor shall appoint each nonattorney commissioner for a term of four (4) years.

(d) Whenever a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the governor in writing of that fact. Vacancies in the office of nonattorney commissioners shall be filled by appointment of the governor within sixty (60) days after he has notice of the vacancy. The nonattorney commissioner appointed shall serve during the unexpired term of the member whose vacancy he has filled.

*As added by P.L.301-1983, SEC.8.*

#### **IC 33-5-5.1-33.1**

##### **Judicial nominating commission; attorney members; election; term; vacancy**

Sec. 33.1. (a) Persons who are admitted to the practice of law and who reside in Allen County (referred to as "attorney electors") shall elect three (3) of their number to the commission. The term of office of each elected attorney member shall be four (4) years, commencing on the first day of October following his election. The election day is the first Tuesday in September, 1983, and every four (4) years thereafter. During the month prior to the expiration of each attorney commissioner's term of office, an election shall be held to fill the succeeding four (4) year term of office.

(b) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner shall be filled for the unexpired term by a special election.

*As added by P.L.301-1983, SEC.9.*

#### **IC 33-5-5.1-34.1**

##### **Judicial nominating commission; attorney members; election; procedure**

Sec. 34.1. The attorney members of the commission shall be elected by the following process:

(a) The clerk of the superior court shall, at least ninety (90) days prior to the date of election, notify all attorneys in Allen County of the election by mail, informing them that nominations must be made to the clerk of the superior court at least sixty (60) days prior to the election.

(b) A nomination in writing, accompanied by a signed petition of ten (10) attorney electors and the written consent of the qualified nominee, shall be filed by an attorney elector in the office of the clerk at least sixty (60) days prior to the election.

(c) The clerk shall prepare and print ballots containing the names and residence addresses of all attorney nominees whose written nominations, petitions, and written statements of consent have been received sixty (60) days prior to the election.

(1) The ballot shall read:

"ALLEN SUPERIOR COURT  
NOMINATING COMMISSION BALLOT

To be cast by individuals residing in Allen County and admitted to the practice of law in Indiana. Vote for not more than three (3) of the following candidates for terms commencing \_\_\_\_\_.

(Name) (Address)

(Name) (Address)

(etc.) (etc.)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the clerk of Allen Superior Court not later than \_\_\_\_\_.

DESTROY BALLOT IF NOT USED"

(2) The three (3) nominees receiving the most votes shall be elected.

(d) The clerk shall also supply with each ballot distributed by the clerk a certificate, to be completed and signed and returned by the attorney elector voting the ballot, certifying that the attorney elector is admitted to the practice of law in Indiana, that the attorney elector resides in Allen County, and that the attorney elector voted the ballot returned. A ballot not accompanied by the signed certificate of the voter may not be counted.

(e) A separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope may not be opened until the counting of the ballots.

(f) The clerk of the superior court shall mail a ballot and its accompanying material to all qualified electors at least two (2) weeks before the date of election.

(g) Upon receiving the completed ballots and the accompanying certificates, the clerk shall ensure that the certificates have been completed in compliance with this chapter. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(h) The clerk, with the assistance of the Allen County election board, shall open and canvass all ballots after 4 p.m. on the day of the election in the office of the clerk of Allen superior court. No ballots received after 4 p.m. are to be counted unless the chairman of the judicial nominating commission orders an extension of time because

of extraordinary circumstances. Upon canvassing the ballots the clerk shall place all ballots in their package. These, along with the certificates, shall be retained in the clerk's office for a period of six (6) months, and the clerk may not permit anyone to inspect them except upon an order of the court of appeals.

(i) If two (2) or more nominees are tied so that one (1) additional vote cast for one (1) of them would give that nominee a plurality, the canvassers shall resolve the tie by lot and the winner of the lot shall be deemed to have been elected.

*As added by P.L.301-1983, SEC.10. Amended by P.L.18-1995, SEC.23.*

### **IC 33-5-5.1-35.1**

#### **Judicial nominating commission; notification of election or appointment**

Sec. 35.1. After the attorney members of the commission have been elected, and after the names of the nonattorney commissioners appointed by the governor have been certified to the secretary of state, the clerk of the supreme court, and the clerk of Allen superior court, the superior court clerk shall notify the members of the commission of their election or appointment.

*As added by P.L.301-1983, SEC.11.*

### **IC 33-5-5.1-36.1**

#### **Judicial nominating commission; service; limitation**

Sec. 36.1. A member of the commission shall serve until his successor is appointed or elected. An attorney commissioner or nonattorney commissioner is not eligible for more than two (2) successive reelections or reappointments.

*As added by P.L.301-1983, SEC.12.*

### **IC 33-5-5.1-37.1**

#### **Vacancy in judgeship; nomination of candidates; meetings of commission**

Sec. 37.1. (a) When a judge of the superior court dies, resigns, is removed from office, or is for any reason ineligible to continue or incapable of continuing in office until the end of his term in office, a judge in another division may within thirty (30) days after the vacancy occurs transfer to the vacant position for the remainder of the transferring judge's term. A judge who has made one (1) transfer is ineligible to make any other transfers. If more than one (1) judge desires to transfer, the most senior of these judges is entitled to transfer. After a transfer, or the thirty (30) day period if no transfer is made, the commission shall meet to nominate three (3) candidates to fill the unexpired term of the vacancy caused by the transferring judge or the original vacancy if no transfer is made.

(b) The clerk shall promptly notify the members of the commission of a vacancy that the commission must fill under subsection (a), and the chairman shall call a meeting of the commission within ten (10) days following that notice. The commission shall submit its nominations of three (3) candidates for the vacancy and shall certify them to the governor no later than sixty (60) days after the vacancy occurred. When

it is known that a vacancy will occur at a definite future date within the term of the governor then serving, the clerk shall notify the chairman and each member of the commission immediately, and the chairman shall call a meeting of the commission within ten (10) days following that notice. The commission may thereafter submit its nominations of three (3) candidates for each impending vacancy and shall certify them to the governor.

(c) Meetings of the commission shall be called by its chairman, or, if he fails to call a necessary meeting, upon the call of any four (4) members of the commission. Written notice of a meeting shall be given by mail to each member of the commission at least five (5) days before the meeting, unless the commission at its previous meeting designated the time and place of its next meeting.

(d) Meetings of the commission shall be held in the Allen County courthouse or in another public building in Allen County designated by the commission.

(e) The commission shall act only at a meeting and may act only by the concurrence of a majority of its members attending a meeting. The commission may adopt rules for the conduct of its proceedings and the discharge of its duties.

*As added by P.L.301-1983, SEC.13. Amended by P.L.168-1984, SEC.4; P.L.209-1996, SEC.5.*

### **IC 33-5-5.1-38.1**

#### **Vacancy in judgeship; nomination of candidates; requirements**

Sec. 38.1. In selecting the three (3) nominees to be submitted to the governor, the commission shall comply with the following requirements:

(a) The commission shall submit only the names of the three (3) most highly qualified candidates from among all those eligible individuals considered. To be eligible for nomination as a judge of the Allen superior court, a person must meet the qualifications listed in section 29.3 of this chapter.

(b) As an aid in choosing the three (3) most qualified candidates, the commission shall in writing evaluate each eligible individual it considers on the following factors:

- (1) Law school record, including any academic honors and achievements.
- (2) Contributions to scholarly journals and publications, legislative draftings, and legal briefs.
- (3) Activities in public service, including:
  - (A) writings and speeches concerning public or civic affairs which are on public record, including campaign speeches or writing, letters to newspapers, and testimony before public agencies;
  - (B) government service;
  - (C) efforts and achievements in improving the administration of justice; and
  - (D) other conduct relating to his profession.
- (4) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer

or judge.

(5) Probable judicial temperament.

(6) Physical condition, including age, stamina, and possible habitual intemperance.

(7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate, patience, decisiveness and dedication.

(8) Membership on boards of directors, financial interest, and any other consideration which might create conflict of interest with a judicial office.

(9) Any other pertinent information that the commission feels is important in selecting the best qualified individuals for judicial office.

(c) An individual may not be evaluated before he states in writing that he desires to hold a judicial office that is or will be created by a vacancy.

(d) The political affiliations of a candidate may not be considered.

*As added by P.L.301-1983, SEC.14.*

#### **IC 33-5-5.1-39.1**

##### **Vacancy in judgeship; submission of list of nominees to governor**

Sec. 39.1. The commission shall submit to the governor, with its list of nominees, its written evaluation of the qualifications of each nominee.

*As added by P.L.301-1983, SEC.15.*

#### **IC 33-5-5.1-40.1**

##### **Vacancy in judgeship; nomination of candidates; substitution of names**

Sec. 40.1. After the commission has nominated and submitted to the governor the names of three (3) nominees, any name may be withdrawn for a cause considered by the commission to substantially affect the nominee's qualifications to hold office, and another name or names may be substituted at any time before the appointment is made to fill the vacancy. If a nominee dies or requests in writing that his name be withdrawn, the commission shall nominate another person to replace him. Whenever there exists at the same time two (2) or more vacancies, the commission shall nominate and submit to the governor a list of three (3) different persons for each of the vacancies. Before an appointment is made, the commission may withdraw the lists of nominations and change the names of any persons nominated from one (1) list to another, or may substitute a new name for any of those previously nominated.

*As added by P.L.301-1983, SEC.16.*

#### **IC 33-5-5.1-41.1**

##### **Vacancy in judgeship; appointment from list of nominees**

Sec. 41.1. (a) A vacancy created by a superior court judge's departure from office before the expiration of his term in office that is not filled by a transfer under section 37.1(a) of this chapter shall be filled by appointment of the governor from the list of nominees. If the

governor fails to make an appointment from the list within sixty (60) days after it is presented to him, the appointment shall be made by the chief justice of the supreme court from the same list.

(b) The governor shall make all appointments to the Allen superior court without regard to the political affiliation of any of the nominees, and shall consider only those qualifications included in section 38.1 of this chapter.

*As added by P.L.301-1983, SEC.17. Amended by P.L.168-1984, SEC.5.*

#### **IC 33-5-5.1-42.1**

##### **Vacancy in judgeship; effective date of appointment**

Sec. 42.1. An appointment to the Allen superior court for the remainder of a departing judge's term in office shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if the vacancy does not yet exist.

*As added by P.L.301-1983, SEC.18.*

#### **IC 33-5-5.1-43.1**

##### **Vacancy in judgeship; appointee to serve unexpired term**

Sec. 43.1. A judge appointed under section 41.1 of this chapter shall serve during the unexpired part of his predecessor's term in office.

*As added by P.L.301-1983, SEC.19.*

#### **IC 33-5-5.1-66**

##### **Repealed**

*(Repealed by Acts 1982, P.L.181, SEC.8.)*

#### **IC 33-5-5.1-67**

##### **Repealed**

*(Repealed by Acts 1982, P.L.181, SEC.8.)*

#### **IC 33-5-5.1-68**

##### **Repealed**

*(Repealed by Acts 1982, P.L.181, SEC.8.)*